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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA, Plaintiff, **v.** **RANDY MILLER,** Defendant.	**Case No. 15-CR-239-F**

MOTION TO REQUIRE DEFENDANT TO PRESENT HIMSELF FOR PHOTOGRAPHS OF TATTOOS

The United States of America, by and through Assistant United States Attorney Eric Heimann, files this motion to require Defendant Randy Miller to present himself so that photographs may be taken of his tattoos. The government intends to use such photographs to identify the Defendant—and not to obtain any communication or testimonial evidence.

BACKGROUND

On July 11, 2012, Defendant Randy Miller was arrested in Cody, Wyoming, for driving under the influence of alcohol. When the Defendant was booked into the Park County jail, deputies took photographs of various tattoos. Throughout this encounter, the Defendant used the identity information of N.D. which caused Cody police to issue citations in N.D.'s name. Then, the Cody Municipal Court issued an arrest warrant for N.D. when the Defendant failed to appear in court on the citations.

In December 2014, N.D.'s wife discovered the outstanding arrest warrant and contacted the Cody Municipal Court to ask that the warrant be quashed because N.D. was not in Cody in July 2012. Cody police investigated and identified Defendant Miller as the identity thief.

On November 18, 2015, the grand jury charged Defendant Miller with two counts of identity theft in violation of 18 U.S.C. § 1028(a)(7). (*Indictment*, Doc. 1.) The Defendant made his initial appearance 11-months later on September 15, 2016. (Doc. 6.) When the Defendant was booked into federal custody prior to his initial appearance, United States Deputy Marshal Justin Cline took booking photographs that included a number of the Defendant's tattoos. However, these photographs did not include all of the same body areas covered by the Park County booking photos taken in July 2012.

On September 19, 2016, the magistrate denied the government's detention motion and released the Defendant. (Doc. 17.) The Defendant has remained on bond since that time.

On September 22, 2016, the grand jury returned a superseding indictment charging the Defendant with two counts of identity theft, misuse of a social security number in violation of 42 U.S.C. § 408(a)(7)(B), and aggravated identity theft in violation of 18 U.S.C. § 1028A(a)(1). (*Superseding Indictment*, Doc. 18.) His jury trial on these charges is currently scheduled to begin on February 7, 2017.

Requested Order

The government requests an order requiring the Defendant to present himself to the United States Marshals in Cheyenne, Wyoming, so that the marshals can take photographs of the same body areas photographed by Park County deputies in July 2012. The government intends to use the resulting photographs to identify the Defendant during the upcoming jury trial. The requested photographs do not constitute testimony and will not elicit any communication from the

Defendant. In this respect, the requested photographs are no different from a cheek swab to obtain DNA or fingerprints.

Since the Defendant is currently on bond and living in Colorado, the government further requests that the order require the Defendant to present himself to the U.S. Marshals at the date and time specified by the government with 24 hours' notice to defense counsel Ms. Ericka Smith. This will prevent undue delay.

WHEREFORE, for the reasons stated above, the government requests that the Defendant be ordered to present himself to the United States Marshals in the District of Wyoming so that the marshals can take photographs of the same body areas photographed by Park County deputies in July 2012.

DATED this 24th day of January, 2017.

CHRISTOPHER A. CROFTS
United States Attorney

By: ____*/s/ Eric Heimann*___________
ERIC J. HEIMANN
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January, 2017, a true and correct copy of the foregoing was electronically filed and consequently served upon defense counsel of record.

*/s/ Vicki Powell*________________________
United States Attorney's Office